IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No.417 of 2000

Date of decision: 28.03.2007

Deep Kumar and others Petitioners.

Versus

State of H P & others Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta,J.

The Hon'ble Mr Justice Surinder Singh, J.

Whether approved for reporting ?[1]

For the Petitioner: Mr B N Gupta, Advocate.

For respondents 1 & 2 Mr M S Chandel, Advocate General, with Mr Ram Murti Bisht, Deputy Advocate General.

For respondent No.3 Mr Anand Sharma, Advocate.

Surinder Singh,J. (Oral)

By filing the instant petition, the petitioners have sought mainly the following relief(s):

(i) direct respondent No.1 to immediately cancel the allotment made to the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

respondent No.3 vide order Annexure P-2;

(ii) set aside the order of the learned Divisional Commissioner, Annexure P-1, being arbitrary, illegal and discriminatory and not based on facts.

We have heard the learned counsel for the parties.

The undisputed factual matrix of the case are:

a) Rattan Chand respondent No.3 was granted land, comprised in Khasra No.72/1, 72/2 and 419/303/196/1 measuring 0-18-2 bighas situated in village Bhiuli, Tehsil Sadar,District Mandi, under the scheme of “Rehabilitation” (Annexure P-3)by the Land Acquisition Officer, B.S.L.Project, on 2.3.1993.

b) The petitioners assailed the order of allotment dated 2.3.1993 in an appeal No.5 of 1994, before the Deputy Commissioner, Mandi, on the ground that the passage to the houses of the right holders passes through the land aforesaid, causing obstruction to its users, therefore, the allotment was wrong and illegal.

c) The Deputy Commissioner, Mandi, dismissed the appeal on 13.5.1996 because the appellants

were not present and he on the examination of the report of the Tehsildar, Sadar, found that adequate provision of the passage, to the right holders was made, which was also reflected in the *Tatima,* therefore, the objection raised by the appellants/petitioner stood resolved.

d) The appellants-petitioner Deep Kumar and others applied for restoration of the appeal. Vide order dated 20.11.1996 the appeal was restored to its original number and was listed for 23.12.1996 for final arguments.

e) Thereafter, the Deputy Commissioner,Mandi, allowed the appeal vide order dated 26.4.1997 and cancelled the grant made by the Land Acquisition Officer, Mandi, in favour of respondent Rattan Chand, virtually reviewing the earlier order passed by his predecessor. This order was assailed before the Commissioner (Revenue) in appeal No.125/97.

f) The Commissioner (Revenue) observed that appellant Rattan Chand was not afforded proper opportunity of being heard, while restoring the appeal, which was dismissed in

default and also that Deputy Commissioner had already referred in his order dated 13.5.1996 that the objections raised by the petitioners herein, have already been resolved. The order passed on 26.4.1997 by the Deputy Commissioner, Mandi, was just like a review of the earlier order passed by his predecessor, which was not in accordance with law. Consequently, order of the Deputy Commissioner passed on 26.4.1997 was set aside.

Controversy raised in this petition.

The above orders are assailed in the present writ petition, seeking above prayers, precisely on the ground that there was dearth of Government land in Bhiuli Mohal and the respondent being an oustee of Purana Bazar, Sundernagar, he could have been allotted the land there, as sufficient Government land was available. It is further averred in the petition that the petitioners and other inhabitants of Bhiuli Mohal have *bartandari* rights over the land allotted to him and there is only one path for ingress and outgress to their houses and grant of land would cause obstruction to the path. It is further case of the petitioners

that the Land Acquisition Officer had acted illegally upon the report of the Kanungo and certificate of the President of the Gram Panchayat who had concealed the true facts, thus no proper inquiry was conducted. Since the land in question is causing great hardship to the petitioners, the impugned order was not justified and the allotment order was also incorrect.

We have given due consideration to the rival contentions and have gone through the record carefully.

As a matter of fact while exercising the writ jurisdiction, this Court does not sit as Court of Appeal. The only thing which requires to be seen at this stage is whether the proper opportunity was afforded to the parties and there was no breach of principle of natural justice and the matter has been decided by the Tribunal in accordance with law.

On perusal of the record of allotment and appeal proceedings before the revenue authorities, we have found that the respondent herein was an eligible person and was fully covered under the Scheme (Annexure P-3). The land in question was situated in the rural area and only 0-18-2 bigha of the Nautor land was granted to him for the “house and cultivation purpose only”. The nautor scheme aforesaid does not make it imperative to grant the land in

the same Mohal, to which the eligible person(s) belong(s) but as per the Scheme he could be allotted the land anywhere in the State of Himachal Pradesh.

A perusal of the record further shows that the petitioners had also filed a civil suit with respect to adjacent Khasra No.73 of village Bhuili, owned by the State Government over which the petitioners were held to be the encroachers by the revenue agencies. Consequently, the order of ejectment was passed on 2.4.1970 against them by the Settlement Officer, exercising the powers of the Assistant Collector Ist Grade. Thereafter, the petitioners had filed a Civil Suit, bearing Suit No. 41 of 1989 before the Senior Sub Judge, Mandi, for declaration to the effect that they were in adverse possession of the said land and the orders passed by the Settlement Officer, was without jurisdiction, hence null and void. Their suit was decreed on 14.6.1990 and the judgment and decree was upheld by the first Appellate Court. Against which, the respondent-State and another filed a Regular Second Appeal No.304 of 1992 in this Court, which was allowed. The judgments and decrees passed by the courts below were set aside and suit of the petitioners was dismissed. Since the petitioners aforesaid were encroachers upon the adjacent land allotted

to the respondent, it appears that they did not want that respondent should settle down in Khasra No.72. Thus raised objection of passage which was otherwise resolved by providing a path.

In the totality of circumstances, the points raised in this petition are only hand twisting tactics to pressurize the respondents as is revealed from the file, placed before us. The perusal of the entire record shows that the Land Acquisition Officer before the grant had complied with all the formalities, thus committed no illegality in granting the land in question to the respondent Rattan Chand, since in the orders impugned we do not find any illegality, accordingly the present writ petition is dismissed. No order as to costs.

CMP No.734 of 2000

In view of order passed in the main writ petition, this application does not survive and stands disposed of accordingly. Interim stay granted on 8th August, 2000 stands vacated.

(Deepak Gupta),J.

March 28,2007 (Surinder Singh),J.
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